

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 75 Freeholder Voting

SPONSOR(S): Davis

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 116

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Naf	Williamson
2) Community & Military Affairs Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

A freeholder election is an election in which only qualified electors who own land in the jurisdiction may vote. Current law requires each freeholder voting in a freeholder election to submit an affidavit made before an inspector affirming that he or she is a freeholder who is a qualified elector residing in the county, district, or municipality in which the election or referendum is to be held.

This bill provides an alternative to the current freeholder's affidavit requirement by also allowing a freeholder to submit a written declaration, which does not require notarization. The bill also makes it a third degree felony for any person to knowingly make a false written declaration affirming freeholder status.

The bill provides an effective date of July 1, 2012.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Freeholder Elections

A freeholder election is an election in which only qualified electors¹ who own land in the jurisdiction may vote.² Typically, freeholder elections concern bond issuance, district creation, and officer selection in counties, municipalities, and special districts. Some issues for which freeholder elections are held in Florida are:

- Issuance by a county, school district, municipality, special district or local governmental body with taxing powers of local bonds to finance or refinance capital projects;³
- Issuance by a county of general obligations bonds;⁴
- Issuance by a county of bonds to build bridges over navigable streams;⁵
- Creation of a water or sewer district in unincorporated areas;⁶
- Issuance of bonds for a water or sewer district;⁷ and
- Creation of a special neighborhood improvement district.⁸

By statute, "each registered elector who makes a sworn affidavit of ownership to the inspectors, giving either a legal description, address, or location of property in the elector's name which is not wholly exempt from taxation shall be ... considered a freeholder."⁹ Currently, each freeholder voting in a freeholder election must submit an affidavit made before an inspector affirming that he or she is a freeholder who is a qualified elector residing in the county, district, or municipality in which the election or referendum is to be held.¹⁰ Compliance with the notarization requirement may be difficult for an active duty military freeholder or other Uniformed and Overseas Citizens Absentee Voting Act freeholder.¹¹

Verification of Documents

Section 92.525, F.S., provides two processes for document verification that is authorized or required by law, by rule of an administrative agency, or by rule or order of court:

- By oath or affirmation before an authorized officer, or
- By the signing of a written declaration.

The form of the written declaration is specified as follows:

A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed

¹ Required qualifications for electors are set out in s. 97.041, F.S., and include, but are not limited to, age, citizenship, and residency requirements.

² See s. 100.241, F.S.

³ Art. VII, s. 12, Fla. Const.

⁴ Section 153.07, F.S.

⁵ Section 130.18, F.S.

⁶ Section 153.53, F.S.

⁷ Section 153.56, F.S.

⁸ Section 163.511, F.S.

⁹ Section 100.241(3), F.S.

¹⁰ Section 100.241(2), F.S.

¹¹ The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 U.S.C. 1973ff-6) provides that UOCAVA citizens are U.S. citizens who are active members of the Uniformed Services, the Merchant Marine, and the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration, their family members, and U.S. citizens residing outside the United States.

by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.¹²

A person who knowingly makes a false written declaration commits perjury by false written declaration, a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.¹³

Effect of Proposed Changes

This bill provides an alternative to the current freeholder's affidavit requirement by also allowing a freeholder to submit a written declaration as provided in s. 92.525, F.S. It also provides that a person who makes a false written declaration commits perjury by false written declaration, a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 100.241, F.S., relating to freeholder voting.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹² Section 92.525(2), F.S.

¹³ Section 92.525(3), F.S. Sections 775.082, 775.083, and 775.084, F.S., specify penalties, including terms of imprisonment and fines, for felony offenders.

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Under section 5 of the Voting Rights Act,¹⁴ new legislation that implements a voting change, including but not limited to, a change in the manner of voting, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office, is subject to preclearance by the U.S. Department of Justice. The preclearance review is to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe. If the Attorney General objects to the voting change, the legislation is unenforceable.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that any person who makes a false written declaration commits perjury by false written declaration and, is guilty of a third degree felony. The same penalty is already provided in s. 92.525(3), F.S., for anyone who knowingly makes a false declaration under the statute. Therefore, the penalty provision provided in the bill appears to be duplicative.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

¹⁴ 42 U.S.C. 1973aa-6.